IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19..04..2005

C O R A M

The Honourable Mrs. Justice PRABHA SRIDEVAN

W.P. Nos.20038 of 2001, 5929, 7383 and 40284 of 2002
W.P.M.P. NOS. 31964 OF 2001, 29545 OF 2001, 8212 OF 2002, 10228 OF 20
& 1645 OF 2004
W.V.M.P. NO. 1153 OF 2002

Tamil Nadu State Transport
Corporation Employees' Federation
(AITUC), rep. by its General
Secretary J. Lakshmanan,
2, Pallavan Salai,
Kali Arangam Complex, .. Petitioner in
Chennai-2. W.P.20038 of 2001

Labour Progressive Federation,
rep. by its General Secretary
M. Shanmugam,
10, Thiagaraya Street, .. Petitioner in
T. Nagar, Chennai-17. W.P.5929 of 2002

Tamil Nadu Arasu Pokkuvarathu
Uzhiyar Sammelanam (CITU)
(Regd. No.2468/MDS),
rep. by its General Secretary, .. Petitioner in
52, Cooks Road, Chennai-12. W.P.7383 of 2002

T. Thirumalaisamy,
General Secretary,
Tamil Nadu Government Transport
Corporation Staff Federation
(601/MDU), TNSTC HQ Complex, .. Petitioner in
Bye Pass Road, Madurai-625 010. W.P.40284 of 2002

Versus

1. State of Tamil Nadu,
   rep. by its Secretary,
   Transport Department, .. Respondent in
   Fort St. George, W.Ps.20038 of 2001 &
   Chennai-9. R1 in W.P 7383 of 2002

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2. Government of Tamil Nadu, rep.
by its Commissioner & Secretary,
Transport Department,
Fort St. George, .. 1st Respondent in
Chennai-9. W.P.5929 of 2002

3. The Chairman,
State Transport Corporations,
(Secretary to Government,
Transport Department), .. 1st Respondent in
Fort St. George, Chennai-9. W.P.40284 of 2002

4. Commissioner and Secretary to
Government of Tamil Nadu,
Labour Department, .. 2nd Respondent in
Fort St. George, Chennai-9. W.P.5929 of 2002

5. The Commissioner of Labour, .. 3rd Respondent in
Labour Commissioner's Office, W.Ps.5929 of 2002
Tamil Nadu Labour Welfare Board and 2nd Respondent
Building, D.M.S. Complex, in W.Ps.7383 &
Teynampet, Chennai-6. 40284 of 2002

6. Tamil Nadu Road Transport Workers' }
HMS Federation 22/2, }
Trichy Road, Singanallur, }
Coimbatore. }
}
7. Tamil Nadu Government Transport }
Workers' Union (CITU), }
52, Cooks Road, }
Chennai-12. }
}
8. Tamil Nadu AITUC State Transport }
Workers' Sammelanam, }
Pallavan Salai, Chennai-2. }
}
9. Anna Thozir Sanga Peravai, }
Royapettah, Chennai-14. }
}
10. Tamil Manila Trade Union }
Congress (TMTUC) }
(Regd. No.2507/MDS), rep. by }
its President N. Nanjappan, }
Sathyamoorthy Bhavan, }
40, Thiru.Vi.Ka. Road, }
Chennai-2. }

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11.Marumalarchi Thozhilalar Munnani, }
"Thayagam", 141, Rukmani }
Lakshmipathy Road, Egmore, }
Chennai-8, rep. by its }
General Secretary, Transport }.. R-4 to R-9 in
Wing Mr. P. Arunagiri. } W.P.5929 of 2002
(R-8 & R-9 in W.P.5929/2002 }
impleaded vide orders passed in }
WPMP.16870/2002 dt.17.4.2002 & }
WPMP.50036/2002 dt.9.2.2005) }

12.Metropolitan Transport Corporation}
(Chennai) Ltd., rep. by its }
Managing Director, Pallavan Salai,}
Chennai-2. }
}
13.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Villupuram Division, }
Villupuram-605 602. }
}
14.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Kanchipuram Division, }
1/2, Nadu Street, Shekpet, }
Kanchipuram-631 501. }
}
15.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Vellore Division, }
9, Rangapuram, }
Vellore-632 009. }
}
16.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Tiruchi Division, }
Periamilaguparai, }
Tiruchi-620 001. }
}

17.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Kumbakonam Division, }

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Railway Station New Road,
Kumbakonam-612 001.

18. Tamil Nadu State Transport
Corporation Ltd. (TNSTC), rep. by
its Managing Director,
Pudukottai Division,
51/1, Pillai Thanneer Pandal,
Thirumayam Road,
Pudukottai-622 001.

19. Tamil Nadu State Transport
Corporation Ltd. (TNSTC), rep. by
its Managing Director,
Virudhunagar Division,
Virudhunagar.

20. Tamil Nadu State Transport
Corporation Ltd. (TNSTC), rep. by
its Managing Director,
Dindigul Division,
Bye-Pass Road,
Dindigul-624 004.

21. Tamil Nadu State Transport
Corporation Ltd. (TNSTC), rep. by
its Managing Director,
Karaikudi Division,
Maruthupathi Mangiri Road,
Karaikudi-630 307.

22. Tamil Nadu State Transport
Corporation Ltd. (TNSTC), rep. by
its Managing Director,
Madurai Division,
Bye-Pass Road,
Madurai-625 010.

23. Tamil Nadu State Transport
Corporation Ltd. (TNSTC), rep. by
its Managing Director,
Tirunelveli Division,
2, Thiruvananthapuram Road,
Vannarapettai,
Tirunelveli-627 003.

24. Tamil Nadu State Transport
Corporation Ltd. (TNSTC), rep. by

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its Managing Director, }
Nagercoil Division, }
Nesamoni Nagar, Rani Thottam, }
Nagercoil-629 001. }
}
25.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Coimbatore Division, }
37, Mettupalayam Road, }
Coimbatore-641 043. }
}
26.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Salem Division, }
12, Ramakrishna Salai, }
Salem-636 007. }
}
27.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Dharmapuri Division, }
Bharathipuram, Salem Road, }
Dharmapuri-636 705. }
}
28.Tamil Nadu State Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Erode Division, }
Chennimalai Road, }
Erode-638 001. }
}
29.State Express Transport }
Corporation Ltd. (TNSTC), rep. by }
its Managing Director, }
Pallavan Salai, Chennai-2. }
}
30.Anna Thozhir Sanga Peravai (ATP), }
rep. by its General Secretary, }
Royapettah, Chennai-14. }
}
31.Labour Progressive Federation, }
rep. by its General Secretary, }
North Usman Road, }
T. Nagar, Chennai-17. }
}
32.Tamil Nadu Govt. Transport }
Corporation Staff Federation, }

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rep. by its Secretary, }
Plot No.288, Transport Nagar, }
Pappan Odai Postal Training }.. R-3 to R-23 in
Centre, Madurai-22. } W.P.7383 of 2002

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PRAYER : Writ Petitions filed under Article 226 of the Constitution of India praying for the reliefs as stated within.

- - - - -

For Petitioner in } Mr. K. Vasudevan
W.P.20038 of 2001 }

For Petitioner in } Mr. R. Viduthalai
W.P.5929 of 2002 }

For Petitioner in } Mr. N.G.R. Prasad for
W.P.7383 of 2002 } M/s. Row & Reddy

For Petitioner in } Mr. M.M. Sundaresh
W.P.40284 of 2002 }

For Respondents : Mr. N.R. Chandran,
Advocate General, assisted by
Mr. R. Chandrasekaran,
Government Advocate and
Mr. P.P. Shanmughasundaram,
Government Advocate
(Respondent in W.P.20038/2001;
RR-1 to 3 in W.P.5929/2002;
RR-1 to 4, 6, 10, 13, 14, 17
and 20 in W.P.7383/2002;
RR-1 & 2 in W.P.40284/2002)

Mr. C. Manohar (R-4)
- in W.P.5929/2002
Mr.V. Ramajagadeesan for R7
in W.P.5929/02

Mr. V.R. Kamalanathan
(RR-5, 7, 9 & 18)
Mr. R. Parthiban (R-8);
Mr. Jayaraman (R9 & R-12);
Mr. L.G. Sahadevan (R-15);
Mr. G. Muniratnam (R-16);
Mr. V.V. Krishnan R-18
Mr. C.P. Pattabiram (R-21)
- in W.P.7383/2002

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O R D E R

The above four writ petitions have been filed for the followi reliefs :

W.P. No.20038 of 2001 - To issue a writ of mandamus directing t respondent to invite the petitioner Federation to participate in t Current Wage Settlement Negotiation and other negotiations and gi sufficient opportunity to express their views.

W.P. No.5929 of 2002 - To issue a writ of mandamus directi respondents 1 to 3 to forbear from inviting any other trade unio excepting the recognised collective bargaining agents elected accordance with the order passed by the Division Bench of the Madr High Court in Writ Appeal No.1205 of 1998 dated 10.11.1998 for all t collective bargaining negotiations relating to the employees of t Transport Undertakings employed under the control of the secc respondent.

W.P. No.7383 of 2002 - To issue a writ of mandamus directi respondents 1 to 20 to conduct elections through secret ballot recognise Trade Unions to represent the workers employed in Sta Transport Corporations in the State of Tamil Nadu and negotiate a effect settlements regarding their service conditions only with t recognised Trade Unions.

W.P. No.40284 of 2002 - To issue a writ of certiorarified mandam calling for the records of the first respondent culminated in and by h Proceedings No.6309/C1/2002-6 dated 24.7.2002, quash the same a consequently directing the respondents to initiate talks on wa revisions and other issues with the elected four Unions insofar as t employees of the Tamil Nadu State Transport Corporations are concern and to take all steps to reach an amicable settlement under Section (3) of the Industrial Disputes Act, 1947.

2. The learned counsel for the petitioners Mr. N.G.R. Pras (W.P. No.7383 of 2002), Mr. R. Viduthalai (W.P. No.5929 of 2002) and M M.M. Sundresh (W.P. No.40284 of 2002) submitted that the responden cannot invite all the Federations/Unions for talks without holding secret ballot as directed by the Supreme Court in FOOD CORPORATION INDIA STAFF UNION VS. FOOD CORPORATION OF INDIA [1995 (2) L.L.J. 272 A.I.R. 1995 S.C. 1344], and by the Division Bench of our High Court the judgment in Writ Appeal Nos.1205 of 1998 etc. reported in 1991 (L.L.N. 238 [THE MANAGING DIRECTOR, TAMIL NADU STATE TRANSPO CORPORATION & OTHERS VS. STATE OF TAMIL NADU & OTHERS]. According them, the purpose of collective bargaining will be lost if t management does not talk with the representative Unions alon According to them, if all the Unions are allowed to participate in t

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talks, it would dilute the spirit of collective bargaining. It further submitted that earlier, in respect of the same Transpo Corporation workers who are the petitioners in these cases, secr ballot was directed to be conducted in the writ appeal cited above. settlement was arrived at which was in force till 31.8.2001. Accordi to the learned counsel, though the period of settlement has come to end, the settlement will be deemed to be in force until a fre settlement is entered into. Therefore, the respondent Corporation bound to invite only those Unions who are elected after a secret ball is conducted; or, they should invite only those Unions who had be elected earlier and had participated in the ballot, which culminated the 2001 settlement. Reliance was placed on the following decisions :

1981 (1) L.L.J. 1 [L.I.C. VS. D.J. BAHADUR]
1970 (1) L.L.J. 83 [SOUTHERN RAILWAY MAZDOOR UNION VS. SOUTHERN RAILWAY]

2000 (1) S.C.C. 371 [NATIONAL ENGINEERING INDUSTRIES LTD. VS. STATE OF RAJASTHAN]

W.P. NO.8721 OF 1998 DATED 4.2.1999
[CHENNAI BHARAT ELECTRONICS EMPLOYEES UNION VS. THE DIRECTOR, BHARAT ELECTRONICS LTD.]

W.P. NO.6415 OF 1991 DATED 2.7.1992
[D. VELLATHURAI VS. LABOUR COMMISSIONER & OTHERS]

W.P. NOS.2551 OF 1999 ETC. DATED 12.2.2001
[N.L.C. MAZDOOR SANGH VS. NEYVELI LIGNITE CORPORATIONs LTD.]

3. Learned Advocate General appearing for the Transpo Corporation submitted that the decision in both the Food Corporation India case and the writ appeal referred to above did not lay down as legal principle that the management is bound to invite only t representative Union for settlement talks; both of them were decisio born out of consensus. The learned Advocate General also pointed o that there is no State law similar to the Maharashtra Recognition Trade Unions & Prevention of Unfair Labour Practices Act. Therefor when a trade union comes into existence as per the provisions of t Trade Union Act, 1926, the said Union cannot be prevented fr representing its workers before the management and referred to Secti 36 of the Industrial Disputes Act, 1947. Learned Advocate General al submitted that in the present case, the subsequent events must be tak note of. After the writ petitions were filed, strike notices unc Section 22(1) of the Industrial Disputes Act were issued by t following Trade Unions on the following dates respectively :

16.3.2002 - Strike Notice by A.I.T.U.C.
18.3.2002 - Strike Notice by C.I.T.U.

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18.3.2002 - Strike Notice by L.P.F.
20.3.2002 - Strike Notice by M.L.F. (M.D.M.K.)
3.4.2002 - Strike Notice by P.M.K.

Therefore, as per Section 20, conciliation proceedings are deemed have commenced. The Conciliation Officer invited the respective Unio for talks and they also participated. Learned Advocate General referr to the correspondence between by the trade unions and t Commissioner/Joint Commissioner (Conciliation). Having agreed to tal being conducted by the Joint Commissioner with all the Unions, it is n not open to the Unions to resile from that position and insist on reli being granted on the basis of the writ prayers. The learned Advoca General submitted that there is no inherent right in the petitioners insist that they alone should be called for talks.

4. Mr. K. Vasudevan, learned counsel appearing for one of t smaller Unions submitted that the petitioner in W.P. No.20038 of 20 had a right to be invited for talks.

5. The following paragraphs in the judgment of the Supreme Cou in the Food Corporation of India case are relevant :

> "But when in an establishment, be it an industry or an undertaking, there are more than one registered trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a union, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employer should bargain, or to put it differently who should be the sole bargaining agent, has been a matter of discussion and some dispute. The 'check off system' which once prevailed in this domain has lost its appeals; and so, efforts are on to find out which other system can foot the bill. The method of secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adapted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or undertaking.
>
> In the appeal at hand, the Food Corporation of India (FCI) and the unions representing the workmen have agreed to follow the "secret ballot system" for assessing the representative character of the trade unions. We have, however, been called upon to lay down as to how the method of secret ballot should be tailored to yield the correct result."

In the National Engineering Industries Ltd. case, the Supreme Cou observed as follows :

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"Where pursuant to identical charters of demands made by several unions, the management and a representative union reached a conciliation settlement to be operative immediately after the expiry of the previous settlement, held, the new settlement became binding on all workmen of the establishment including those belonging to a dissenting minority union - Principle of collective bargaining underlying the Act for resolving industrial disputes and maintaining peace, taken note of - Hence, during the existence of such a settlement, a dissenting minority union, which was not eligible for registration as a representative union, held, was not entitled to raise an industrial dispute in respect of the demands left out in the new settlement."

6. In Writ Petition No.6415 of 1991 decided on 2.7.1992, t question was with regard to the election of the Office Bearers a Executive Members of Binny Beach Engineering Workers' Union. In t circumstances of that case, this Court held that election being democratic process for the functioning of the trade union, mandamus c be issued. That decision may not apply to this case.

7. In Writ Appeal No.1205 of 1999, by order dated 14.12.1998, Division Bench of this Court ordered secret ballot to be conducted so to decide who should represent the workers for arriving at a settleme and directed the respondent Corporation to issue a public notice up whomsoever concerned and intends to participate in the proceedings sin there were a large number of trade unions. The parties in this wr petition were the parties before the Division Bench, viz. the Manageme and the workers of the State Transport Corporation and on the next da of hearing, the Division Bench noted, "After considerable discussion the counsel agreed for a separate ballot being held on the basis of t Federation to represent the workers in the wage settleme negotiations."

8. There is no doubt that a settlement does not suffer "deat merely because of the notice issued under Section 19(2), the award, ev if it ceases to be operative qua award continues qua contract - vi 1981 (I) L.L.J. 1 [LIFE INSURANCE CORPORATION OF INDIA VS. D. BAHADUR]. Therefore, even if the parties are at liberty to seek alteration of the contract, until altered the contract continues govern the relation between the parties in respect of the terms a conditions of service. But, merely because the terms of the settleme continue to operate until they are replaced, the Unions which we parties to the earlier settlement cannot insist that only they should invited by the respondent for talks. Though the writ petitione represented by learned counsel Mr. N.G.R. Prasad, Mr. R. Viduthalai a Mr. M.M. Sundaresh now contend that they alone should represent t workmen in the talks with the respondent Corporation, their stand aft the filing of the writ petitions appears to have been different.

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9. To the notice issued by the Commissioner of Labour for t conciliation proceedings after the strike notices were issued, a comm reply statement was filed by the respondent Corporation. At that tim the following writ petitions were pending :

W.P. No.5929 of 2002 filed by L.P.F.
W.P. No.7383 of 2002 filed by C.I.T.U.
W.P. No.20473 of 2001 filed by T.M.T.U.C.
W.P. No.20038 of 2001 filed by A.I.T.U.C.
W.P. No.20693 of 2001 filed by I.N.T.U.C.
W.P. No.31463 of 2002 in W.P. No.5929 of 2002 filed by M.L.F.

W.P. No.20693 of 2001 filed by H.M.S.

The petitioners sent letters to the Commissioner of Labour as detail below :

Date	Union	Contents
14.6.2004	Marumalarchi Thozhilalar Munnani	The General Secretary of this Union has stated that when there is no stay by the High Court ("உயர் நீதிமன்றனம் தடை உத்திரவு ஏதும் வழங்காத நிலையில் "), there is no prohibition restraining respondent from conducting talks with the workmen and that they would extend their full co-operation ("எமது அமைப்பு முழு ஒத்துழைப்பு அளிக்குமென தெரிவித்துக் கொள்கிறோம;") .
14.6.2004	Thozhilalar Munnetra Sanga Peravai	In this, it is stated that there is no question of withdrawing the writ petitions when no stay has been granted by this Court with the request to the Management to have direct talks with the Unions - ("எனவே ஊதிய உயர்வு குறித்து நிர்வாகம், தொழிற்சங்கங்களுடன் நேரடி பேச்சு வார்த்தையினை தொடர்ந்திட ஆவன செய்திடுமாறு கேட்டுக் கொள்கிறோம் ").
14.6.2004	Tamil Nadu Government Transport Corporations Staff Federation	In this, it is stated that no stay has been granted in any case with regard to the conciliation talks and that immediately steps should be taken to commence conciliation talks - ("எனவே தாங்கள் தங்கள்

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கடிதத்தில் அரசு சார்பில் கேட்டுக் கொள்ளும் வேண்டுகோளை ஏற்பதற்கு முன் எங்களது கீழ்கண்ட கருத்துக்களை பரிசீலனை செய்ய கேட்டுக் கொள்கிறோம்.

1) ஒப்பந்தம் முடிந்த 31–08–2001ற்கு மறுதினமான 01 செப்.2001 முதல் அமுலுக்கு வரும் வகையில் ஒப்பந்த பேச்சுவார்த்தை துவக்க வேண்டும்.
2) சாதாரண தொழிற்தாவா போல் தொ.தா. சட்ட சரத்து 12(4)ன் கீழ் முறிவறிக்கை என்ற நிலை இருக்கக் கூடாது.
3) அரசு செயலர், அமைச்சர் மட்ட பேச்சுவார்த்தை துவக்கப்பட்டு ஒப்பந்தம் ஏற்பட அனைத்து முயற்சிகளும் எடுக்கப்படவேண்டும்.

இத்தகைய ஒரு சட்டபூர்வமான தீர்வுக்கு அரசு முன்வரும் பட்சத்தில் தாங்கள் எங்களது வழக்கை வாபஸ் பெறுவது தொடர்பாக கலந்து முடிவெடுக்க இயலும் என இதன்மூலம் தெரிவித்துக் கொள்கிறோம்").

16.4.2004	Tamil Nadu Road Transport Workers	In this, it is stated that W.P. No.20693 of 2001 has been withdrawn under the belief that
-	the respondent would invite all the Unions, including the HMS Federation, for talks - ("தொழிலாளர்களுக்கு விரைவில் ஊதிய ஒப்பந்தம் ஏற்படும் வகையில் தாங்கள் HMS உட்பட அனைத்து மாநில பேரவைகளையும் உடனே அழைத்து பேசுவீர்கள் என்ற நம்பிக்கையின் அடிப்படையிலும் எங்களின் உயர்நீதிமன்ற வழக்கை (20693/2001) திரும்ப பெற்றுள்ளோம் என்பதை அன்புடன் தெரிவித்துக் – கொள்கிறோம்").	
14.6.2004	Tamil Nadu Arasu Pokkuvarathu Oozhiyar Sammelanam	In this, it is stated that no stay has been granted by any Court in any case and that if a date is fixed by the
-	respondent for conciliation, immediately they would withdraw the writ petition pending before the High Court - ("நிர்வாகம் பேச்சுவார்த்தைக்கான ஒரு தேதியை நிர்ணயித்து எங்களுக்கு கடிதம் எழுதினால் உடனே எங்கள் சம்மேளனத்தின் சார்பில் சென்னை உயர்நீதிமன்றத்தில் உள்ள பேச்சுவார்த்தை தொடர்பான வழக்கைத் திரும்பப் பெற்றுக்கொள்கிறோம் என்று இதன் மூலம் தெரிவித்துக்கொள்கிறோம்").	
18.6.2004	Indian National Transport Workers Federation	This Union has thanked the respondent for the concrete steps and have assured the Government

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that no litigation would be pursued any longer – ("We request you to kindly inform the government, that regarding INTUC, it may remain assured that no litigation would be pursued any longer").

22.6.2004	Tamil Nadu Arasu Pokkuvarathu Kazhagangalin Thozhilalar Sammelanam	In this, it is stated that if a letter is given intimating the initiation of talks and guaranteeing the participation of the

- AITUC Union, they would immediately withdraw the writ petition – ("ஊதிய ஒப்பந்த பேச்சுவார்த்தையை துவக்குவது குறித்தும், ஆதில் ஏ.ஐ.டி.யு.சி. போக்குவரத்து தொழிலாளர் சம்மேளனத்தை பங்கேற்க செய்வதையும் உத்தரவாதப்படுத்தும் பட்சத்தில் அரசு/நிர்வாகம் எங்களுக்கு கடிதம் அனுப்பினால் உடனே சென்னை உயர்நீதிமன்றத்திலுள்ள எங்களது வழக்கை திரும்ப பெற தயாராக உள்ளோம் என்பதை தெரிவித்துக் கொள்கிறோம்").

These letters were forwarded by the Commissioner of Labour to t respondent Management along with his letter dated 22.6.2004. It is se from this letter that only three Unions had not replied, viz. An Thozhilalar Peravai, Ambedkar Arasu Pokkuvarathu Thozhir Sanga Perava Pattali Thozhir Sanga Maiyam. These three Unions have not filed t writ petitions. The petitioners also warned the respondents that th there would be an agitation if the Government does not invite the Unio for talks. This is dated 5.11.2004, and the crucial words, which a extracted hereunder, indicate that the Government should invite t labour unions for talks :

"அரசு ஊழியர் சங்கங்களுடன் பேச்சு வார்த்தை நடத்தி அவர்களின் போராட்ட காலத்தை பணிக்காலமாக அறிவித்ததைப் போல, போக்குவரத்து, நுகர்பொருள் வாணிபக் கழக தொழிலாளர்களுக்கும் 2001 போராட்ட காலத்தைப் பணிக்காலமாக அறிவித்திட தொழிற்சங்கங்களை அழைத்து போசிட முன்வரவேண்டுமென தமிழக அரசை இம்மாநாடு வலியுறுத்துகிறது,"

Therefore, at this stage, all that the petitioners were urging for that the respondent Corporation should initiate talks with all t Workers' Unions. No demand was made by any of them that they alo should be called for the talks.

10. In 1984 (Supp.) S.C.C. 663 [BALMER LAWRIE WORKERS' UNION V BALMER LAWRIE & CO. LTD.], the Supreme Court held :

"Multiplicity of political parties had its spill-over in multiplicity of trade unions seeking to represent workmen in an industrial undertaking or industry, as the case may be.

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> The fallout of the multiplicity of such unions was inter-union and intra-union rivalry which threatened the peaceful working of the industrial undertaking or the industry. Each union, as the unfortunate experience shows, tried to overreach the rival by making occasionally exorbitant and untenable demands".

One of the strong objections raised to the Management's initiation talks with all the Unions is that it would dilute the spirit collective bargaining. In 1976 (2) S.C.C. 82 [ROHTAS INDUSTRIES LIMIT VS. ROHTAS INDUSTRIES STAFF UNION], the Supreme Court had an occasion deal with an agreement between the management and labour, in which t workmen were represented by two registered unions and two unregister unions which had a lesser following, so such agreements are possible a have been accepted. The interest of the workers should not be lost the heat of inter-union rivalry. The Unions should not lose sight the woods for the trees. In 1976 (4) S.C.C. 736 [HERBERTSONS LIMIT VS. WORKMEN], the Supreme Court commented about the disquieting featu of union rivalry whereby the significance of collective bargainin which is the forte of a union, is sought to be taken away.

11. In this case, the Management has invited all the Unions take part in the conciliation talks. It is clear from the paragrap extracted above that this is a decision which the Management is entitl to take. In these circumstances, the writ petitioner in W.P. No.7383 2002 cannot insist on the conduct of elections through secret ballot decide as to which Union should negotiate and effect settlemen especially when it has, by its letter dated 14.6.2004, as extract above, indicated that it would take part in the talks. Similarly, t writ petitioner in W.P. No.5929 of 2002 cannot insist on the responde Corporation being restrained from inviting any other trade union expe the recognised collective bargaining agents elected in accordance wi the order passed in the writ appeal referred to earlier. The order the said writ appeal was one passed on the agreement of the counsel a the parties in that case for the purpose of entering into a settlemen That settlement has come to an end and the terms of that settlement wi continue to be in force until there is a fresh settlement, but th cannot mean that the parties to the earlier settlement can alone parties to the settlement that is to come and that the responde Corporation cannot invite all the Unions to take part in the talks. regards the writ petitioner in W.P. No.40284 of 2002, this petition has also given a letter on 14.6.2004 agreeing to take part in the tal and also undertaking to withdraw the writ petition filed by them. The prayer in the writ petition is for a direction to the respondents initiate talks on wage revisions with the elected four unions. For t reasons applied in the case of the petitioner in W.P. No.5929 of 200 the petitioner in this writ petition also cannot insist for an exclusi right. Insofar as the writ petitioner in W.P. No.20038 of 2001 concerned, they have, by their letter dated 22.6.2004, agreed withdraw the writ petition filed by them in the event of the Manageme

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guaranteeing the participation of the petitioner in the talks. It doubtful if the petitioner in this writ petition can insist on bei invited for taking part in the conciliation proceedings. By the lett dated 28.3.2002, the Secretary to the Government had requested t Commissioner of Labour to take immediate action to convene conciliati meetings. Paragraph 5 of the said letter shows that the demands rais by all the Unions are the same and common and therefore, a conciliati meeting may be convened, informing the Unions to be represented by o leader from each Federation. There is reference to the trade unio which were elected in the year 1998 to represent the workmen.

12. In the counter filed by the respondent Corporation (a comm counter), it is seen that nine Unions, including the six representativ elected in the year 1998, have given a request for negotiation and th request is not confined to those six Unions alone, but other Unions w were elected in the year 1998 as well. It is also seen from the count and it is reiterated by the learned Advocate General that the Governme has taken a policy decision to invite all the registered Trade Unio and Federations to participate in the wage settlement talks. Even the judgment of the Division Bench referred to earlier, by which t parties in these writ petitions agreed to have a secret ballot, t Division Bench merely said that the Transport Corporation will be liberty to negotiate with the representatives so elected. There was mandatory direction given to the respondent to conduct talks. T petitioners are unable to point out any legislative provision whi declares that they alone should be invited to talk with the managemen The two judgments referred to by the counsel for the petitioners a admittedly consensual judgments. On the other hand, the judgment 2002 (5) S.C.C. 669, the Supreme Court has clearly declared that t management should act in a manner which helps in uniting the employe and not give an impression of divisive force out to create differenc and distrust among workmen, and the question as to who should be call for the negotiation is something which is for the management to decid In these circumstances, when this is the legal position, the mandam sought for cannot be granted.

13. In 2003 (5) S.C.C. 437 [UNION OF INDIA VS. INTERNATION TRADING CO.], the Supreme Court observed as follows :

> "The courts as observed in G.B. Mahajan v. Jalgaon Municipal Council [1991 (3) S.C.C. 91] are kept out of the lush field of administrative policy except where a policy is inconsistent with the express or implied provision of a statute which creates the power to which the policy relates or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the court will intervene. That is and ought to be a difficult onus for an applicant to discharge. The courts are not very good at

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formulating or evaluating policy. Sometimes when the courts have intervened on policy grounds the courts' view of the range of policies open under the statute or of what is unreasonably policy has not got public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism.

As Professor Wade points out (in Administrative Law by H.W.R. Wade, 6th Edn.), there is ample room within the legal boundaries for radical differences of opinion in which neither side in unreasonable. The reasonableness in administrative law must, therefore, distinguish between proper course and improper abuse of power. Nor is the test court's own standard of reasonableness as it might conceive it in a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the court thinks it to be unwise.

In Union of India v. Hindustan Development Corporation [1999 (4) S.C.C. 727], it was observed that decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest where the doctrine of legitimate expectation can be applied. If it is a question of policy, even by ways of change of old policy, the courts cannot intervene with the decision. In a given case whether there are such facts and circumstances giving rise to legitimate expectation, would primarily be a question of fact.

.....

If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed."

It was observed in the above case that it shows that a conscious poli decision has been taken. This decision has been followed in 2005 (L.W. 519 [THE TAMIL NADU ELECTRICITY BOARD VS. TAMIL NADU ELECTRICI BOARD ENGINEERS' ASSOCIATION (D.B.)], where the entire case l regarding the scope of interference by courts in matters of publ policy has been dealt with and reference has been made to the decisio in A.I.R. 1980 S.C. 379 [TAMIL NADU EDUCATION DEPARTMENT MINISTERIAL A GENERAL SUBORDINATE SERVICES ASSOCIATION VS. STATE OF TAMIL NADU A.I.R. 1984 S.C. 1543 [MAHARASHTRA STATE BOARD OF SECONDARY AND HI SECONDARY EDUCATION VS. PARITOSH BHUPESH KUMAR SETH], 2000 (8) S.C. 262 [NETAI BAG VS. STATE OF WEST BENGAL], 2001 (3) S.C.C. 635 [UG SUGAR WORKS LIMITED VS. DELHI ADMINISTRATION] and 2002 (6) S.C.C. 2 [STATE OF RAJASTHAN VS. LATA ARUN]. When the Supreme Court, in 2002 (S.C.C. 669, has held that it is for the management to decide who shou be invited for taking part in the talks, there is no scope for a interference when the management has decided to invite all t

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Federations for deciding the issue of wage settlement.

14. The letter of the Secretary has already been referred t which requests the Commissioner of Labour to invite all t Unions/Federations and the letters of the Federations demanding that t management should invite the Unions for these talks have also be listed above. The view of the Government that considering the fact th the demands of all the Unions are alike and therefore the Unions must invited is on the basis of the information in its possession, the advi it receives and according to its own perspective and calculation. The is no attack by any one of the petitioners that this decision is ma fide and therefore, even if it is wrong, it is not open to challenge. has not been demonstrated that it is wrong. Only the petitioners appe to assert that it is their exclusive right to be invited for the tal and it has not been shown that there is such an inherent right. In 19 (9) S.C.C. 495 [KRISHNAN KAKKANTH VS. GOVERNMENT OF KERALA], the Supre Court observed that it is not necessary for the Court to find out there is wisdom in the State's policy and that it does not matt whether a better or more comprehensive decision could have been tak and that a policy decision cannot be struck down unless it is apparent capricious or arbitrary or unreasonable or suffers from the vice discrimination or infringes any statute or provisions of t Constitution. The policy decision in this case does not fall in any these categories so as to warrant interference.

15. In 2003 (11) S.C.C. 607 [CHAIRMAN, STATE BANK OF INDIA VS. A ORISSA STATE BANK OFFICERS' ASSOCIATION], there were two association one registered unrecognised union having less than 9% membership and t other a union recognised for the purpose of collective bargaining. T complaint of the smaller union was that the management was adopting policy of hostile discrimination and showing undue favour to the larg union. In that case, the High Court referred to Rule 24 of t Verification of Membership and Recognition of Trade Unions Rules, 199 which confer some rights on unrecognised unions and directed t management to implement the principle. This direction was challenged the management and the same was dismissed by the Supreme Court in 20 (5) S.C.C. 669 [CHAIRMAN, STATE BANK OF INDIA VS. ALL ORISSA STATE BA OFFICERS' ASSOCIATION]. The following paragraphs in 2002 (5) S.C.C. 6 are important :

> "With growth of industrialization in the country and progress made in the field of trade union activities the necessity for having multiple unions in an industry has been felt very often. Taking note of this position power has been vested in the management to recognize one of the trade unions for the purpose of having discussions and negotiations in labour-related matters. This arrangement is in recognition of the right of collective bargaining of workmen/employees in an industry."
>
> .....

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"Whether negotiation relating to a particular issue is necessary to be made with representatives of the recognized union alone or relating to certain matters concerning individual workmen it will be fruitful to have discussion/negotiations with a non-recognized union of which those individual workmen/employees are members is for the management or its representative at the spot to decide. At the cost of repetition we may state that it has to be kept in mind that the arrangement is intended to help in resolving the issue raised on behalf of the workmen and will assist the management in avoiding industrial unrest. The management should act in a manner which helps in uniting its workman/employees and not give an impression of a divisive force out to create differences and distrust amongst workmen and employees."

As against that, a review was filed. The judgment on review is 20 (11) S.C.C. 607 cited supra. The case of the management is set out the following paragraph :

"The review petitioner has urged two points in support. First, that even the majority union does not have the right of negotiation or representation with respect to individual grievances and denial of this right to a union, which was admittedly a minority union, could hardly be said to be discriminatory as the High Court seems to have assumed. On the contrary, it is urged that conferring such a special right on the minority union would amount to reverse discrimination. Secondly, it is contended that in common law there is no obligation on an employer to confer upon a union the right to represent individual employees and unless such a provision is expressly made by any statute or statutory rules, the employer is not obliged to grant any such right. The High Court has found that the 1994 Verification Rules do not apply. In any event, State Bank as a public sector bank had created its own efficacious grievance-settlement machinery and there was no justification for the High Court to import the principle, if any, from Rule 24 of the inapplicable Rules to override the grievance-redressal machinery which was already in place. The petitioner contends that these submissions have been lost sight of in the judgment, which is sought to be reviewed. Hence, the review petition."

The review was ultimately allowed as follows :

"In our view, the contention urged by the counsel for the review petitioner has merit and needs acceptance. There is no common law right of a trade union to represent its members, whether for purposes of collective bargaining or individual

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grievances of members. This is an inroad made into the common law by special statutes. Either the special statute operates proprio vigore, or it does not. In the situation before us, it is undisputed that Rule 24(a) on which the respondent Association and the High Court placed reliance, has no application. This is accepted even in the judgment under review. Nonetheless, on general principles of equity, justice and fair play the judgment under review holds that the minority trade union should also be afforded an opportunity of ventilating individual grievances of its members. It appears to us that, in doing so, the attention of this Court was not adverted to the elaborate grievance-procedure machinery which is in existence and the details of which are placed on record.

Having considered the matter in its entire perspective, we are inclined to agree with the submissions of the review petitioner. We do not think that denying such a right of representation to the minority union, when such a right is not conceded even to the majority union, amounts to discrimination requiring redressal at the hands of the High Court. It is also not possible for the High Court to exercise its powers under Article 226 to direct an employer to bring into existence such a system of representation in grievance procedure. In the absence of arbitrariness or discrimination. In our judgment, there was no scope at all for interference in exercise of writ jurisdiction. It is urged by Shri. Salve for the review petitioner that the application of such a principle in one zone might create serious repercussions all over, since the Bank has branches throughout the country. We also noticed that the appropriate Government in respect of State Bank of India is the Central Government and the rules made by the State Government cannot be enforced against it. Considering all aspects of the matter, it appears to us that the review petition must be allowed, as these crucial issues were not considered in the judgment under review."

16. This is the law. The petitioners, however, assert that th have the exclusive right to be called for the talks unless and until secret ballot is held. The source to which they trace their so call right is not to any statute nor a law laid down by the Supreme Cour but only to the judgment of the Supreme Court in the Food Corporation India case which, as stated earlier, are consensual judgments.

17. It is also seen from 2000 (5) S.C.C. 669 cited supra that t management is the best person to decide on the spot who should be call for the talks. The management decided to adopt a policy whereby nobo will be discriminated against. There can be no objection to such policy. The petitioners knew that all the Unions would be invited a

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had either not objected or had in fact agreed to that. The mere fa
that all the Unions were invited would not by itself dilute the spir
of collective bargaining. But above all, one is saddened by t
internecine rivalry between Unions.

18. For all these reasons, all the writ petitions are dismisse
However, there will be no order as to costs. Consequently, t
connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary,
   Transport Department,
   State of Tamil Nadu,
   Fort St. George,
   Chennai-9.

2. The Commissioner & Secretary,
   Transport Department,
   Government of Tamil Nadu,
   Fort St. George, Chennai-9.

3. The Chairman,
   State Transport Corporations,
   (Secretary to Government,
   Transport Department),
   Fort St. George, Chennai-9.

4. Commissioner and Secretary to
   Government of Tamil Nadu,
   Labour Department,
   Fort St. George, Chennai-9.

5. The Commissioner of Labour,
   Labour Commissioner's Office,
   Tamil Nadu Labour Welfare Board
   Building, D.M.S. Complex,
   Teynampet, Chennai-6.

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6. The Managing Director,
   Metropolitan Transport Corporation
   (Chennai) Ltd., Pallavan Salai,
   Chennai-2.

7. The Managing Director,
   Tamil Nadu State Transport
   Corporation Ltd. (TNSTC),
   Villupuram Division,
   Villupuram-605 602.

8.The Managing Director
  Tamil Nadu State Transport
   Corporation Ltd. (TNSTC),
   Kanchipuram Division,
   1/2, Nadu Street, Shekpet,
   Kanchipuram-631 501.

9.The Managing Director,
  Tamil Nadu State Transport
   Corporation Ltd. (TNSTC),
      Vellore Division,
   9, Rangapuram,
   Vellore-632 009.

10.The Managing Director,
  Tamil Nadu State Transport
   Corporation Ltd. (TNSTC),
   Tiruchi Division,
   Periamilaguparai,
   Tiruchi-620 001.

11.The Managing Director,
  Tamil Nadu State Transport
   Corporation Ltd. (TNSTC),
   Kumbakonam Division,
   Railway Station New Road,
   Kumbakonam-612 001.

12.The Managing Director,
  Tamil Nadu State Transport
   Corporation Ltd. (TNSTC),
   Pudukottai Division,
   51/1, Pillai Thanneer Pandal,
   Thirumayam Road,
   Pudukottai-622 001.

13.The Managing Director,
   Tamil Nadu State Transport

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Corporation Ltd. (TNSTC),
Virudhunagar Division,
Virudhunagar.

14.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Dindigul Division,
Bye-Pass Road,
Dindigul-624 004.

15.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Karaikudi Division,
Maruthupathi Mangiri Road,
Karaikudi-630 307.

16.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Madurai Division,
Bye-Pass Road,
Madurai-625 010.

17.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Tirunelveli Division,
2, Thiruvananthapuram Road,
Vannarapettai,
Tirunelveli-627 003.

18.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Nagercoil Division,
Nesamoni Nagar, Rani Thottam,
Nagercoil-629 001.

19.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Coimbatore Division,
37, Mettupalayam Road,
Coimbatore-641 043.

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20.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Salem Division,
12, Ramakrishna Salai,
Salem-636 007.

21.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Dharmapuri Division,
Bharathipuram, Salem Road,
Dharmapuri-636 705.

22.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd. (TNSTC),
Erode Division,
Chennimalai Road,
Erode-638 001.

23.The Managing Director,
State Express Transport
Corporation Ltd. (TNSTC),
Pallavan Salai, Chennai-2.

1 cc to Mr.V.R. Kamalanathan, Advocate, SR. 19004
1 cc to Mr.C.Pattabiraman, Advocate, SR. 18568
1 cc to M/S. Row & Reddy Advocates, SR. 18701
2 ccs to M/S. A.V. Bharathi, Advocate, SR. 18718 & 18719
1 cc to Ms.Kala Ramesh, Advocate, SR. 18846
1 cc to Mr.L.G. Sakadevan, Advocate, SR. 18845
1 cc to Mr.M.M. Sundresh, Advocate, SR. 18872
1 cc to Mr.P. Chandrasekaran, SR. 18905
1 cc to Mr.K. Vasudevan, Advocate, SR. 18815
1 cc to The Govt. Pleader High Court, Madras. SR. 19295

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